IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1977

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NO. 77-6553

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WILLIAM ARRINGTON,

APPELLANT,

V.

STATE OF MISSOURI,

RESPONDENT.

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SUPREME COURT, U S

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APPEAL FROM THE SUPREME COURT OF MISSOURI

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PRO SE

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COMES NOW THE APPELLANT, WILLIAM ARRINGTON, APPEARING PRO SE AFTER HAVING BEEN ABANDONED BY APPOINTED APPELLATE COUNSEL, AND PRAYS THAT THIS COURT WOULD REVIEW VIA APPEAL THE OPINION AND JUDGEMENT OF THE SUPREME COURT OF MISSOURI IN THEIR PROCEEDINGS JANUARY 9, 1978 OR IN THE ALTERNATIVE THAT THE COURT WOULD TREAT THESE PAPERS AS A PETITION FOR WRIT OF CERTIORARI AND THAT SUCH WRIT MAY BE ISSUED TO REVIEW THE OPINION AND JUDGEMENT OF THE SUPREME COURT OF MISSOURI.

## OPINION BELOW

APPELLANT SEEKS APPEAL FROM THE DECISION OF THE SUPREME COURT OF MISSOURI, IN RE STATE OF MISSOURI, RESPONDENT VS. WILLIAM ARRINGTON, APPELLANT, IN CAUSE NO. 59699. A COPY OF THIS OPINION IS INCLUDED AND ATTACHED HERETO IN THE APPENDIX HEREIN.

## JURISDICTION

THE JURISDICTION OF THE UNITED STATES SUPREME COURT IS INVOKED PURSUANT TO 28 U.S.C., SECTION 1257(2), WHICH PERMITS REVIEW BY THE SUPREME COURT, BY APPEAL, AFTER RENDITION OF JUDGEMENT OF CASES BY THE HIGHEST COURT OF A STATE IN WHICH A DECISION COULD BE HAD

WHERE IS DRAWN IN QUESTION THE VALIDITY OF A STATUE OF ANY STATE ON THE GROUND OF ITS BEING REPUGNANT TO THE CONSTITUTION, TREATIES OR LAWS OF THE UNITED STATES AND THE DECISION IS IN FAVOR OF ITS VALIDITY. THIS IS SUCH A CASE. THE DATE OF THE JUDGEMENT OF THE CASE APPELLANT SEEKS REVIEW UPON WAS JANUARY 9, 1978 AND THIS APPEAL IS TIMELY FILED PURSUANT TO RULE 22(2) OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

## QUESTION PRESENTED

THE QUESTION PRESENTED FOR REVIEW IS AS FOLLOWS, TO WIT:

"WHETHER THE MISSOURI JURY-SELECTION SYSTEM, WHICH UNDER ARTICLE I, SECTION 22(B) OF THE MISSOURI CONSTITUTION ALLOWS WOMEN AN AUTOMATIC EXEMPTION, DEPRIVED APPELLANT OF HIS SIXTH AND FOURTEENTH AMENDMENT RIGHT TO AN IMPARTIAL JURY TRIAL."

## CONSTITUTIONAL PROVISIONS AND STATUES INVOLVED

THE CONSTITUTIONAL PROVISIONS AND STATUES WHICH THE CASE INVOLVES ARE AS FOLLOWS:

A. AMENDMENT VI OF THE UNITED STATES CONSTITUTION:

> IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE.

B. AMENDMENT XIV, SECTION I OF THE UNITED STATES CONSTITUTION:

> ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

C. CONSTITUTION OF THE STATE OF MISSOURI, 1945, ARTICLE I, SECTION 22(B):

> FEMALE JURORS-OPTIONAL EXEMPTION. NO CITIZEN SHALL BE DISQUALIFIED FROM JURY SERVICE BECAUSE OF SEX, BUT THE COURT SHALL EXCUSE ANY WOMEN WHO REQUESTS EXEMPTION THEREFROM BEFORE BEING SWORN AS A JUROR.

## STATEMENT OF THE CASE

THIS IS AN APPEAL FROM THE DECISION OF THE SUPREME COURT OF MISSOURI WHICH AFFIRMED APPELLANT'S CONVICTION OF SECOND DEGREE MURDER AND ROBBERY FIRST DEGREE.

APPELLANT IS CURRENTLY CONFINED IN THE PENITENTIARY OF THE STATE OF MISSOURI IN JEFFERSON CITY, MISSOURI.

THE TRIAL OF THIS MATTER WAS CONDUCTED IN THE SIXTEENTH JUDICIAL CIRCUIT COURT OF JACKSON COUNTY, ON APRIL 12, 1976. A JURY PANEL WAS BROUGHT UP AND APPELLANT MOVED TO QUASH THE JURY PANEL BECAUSE ARTICLE I, SECTION 22(B) OF THE MISSOURI CONSTITUTION, A STATUTORY PROVISION FOR SUMMONING JURORS WHICH ALLOWS WOMEN AN AUTOMATIC EXEMPTION, DEPRIVED APPELLANT, AS A CRIMINALLY ACCUSED, HIS SIXTH AMENDMENT RIGHT TO A PANEL REPRESENTATIVE OF A CROSS-SECTION OF SOCIETY, AND THUS HIS RIGHT TO DUE PROCESS OF LAW. APPELLANT'S CHALLENGE TO THE STATUE AND THE JURY PANEL WAS PREFACED BY THE FOLLOWING COLLOQUY:

> "MR. MERRITT: JUDGE, I HAVE ONE OBJECTION TO THE JURY PANEL. I BELIEVE THAT THE CLIENT WILL BE DENIED DUE PROCESS BY THE FACT THAT OUR MISSOURI CONSTITUTION AND STATUES ALLOW THE EXCLUSION OF FEMALES FROM JURY DUTY BECAUSE OF THEIR GENDER. I BELIEVE THAT THAT IS A DENIAL OF DUE PROCESS AND ASK THAT THE JURY BE QUASHED AND A NEW JURY PANEL DRAWN ON THE BASIS OF NON-EXCLUSION OF AN IDENTIFIABLE GROUP OF THE POPULACE."
>
> "THE COURT: OVERRULED".

THE COURT DID NOT PERMIT APPELLANT TO ENTER ANY EVIDENCE IN SUPPORT OF HIS MOTION, NOR WAS ANY EVIDENCE RECEIVED.

ON APRIL 15, 1976, THE CAUSE WAS SUBMITTED TO THE JURY FOR THE DETERMINATION OF GUILT AND APPELLANT WAS FOUND GUILTY OF ROBBERY IN THE FIRST DEGREE AND MURDER IN THE SECOND DEGREE. ON APRIL 23, 1976, APPELLANT FILED A TIMELY MOTION FOR NEW TRIAL IN THE WHICH THE CLAIM HEREIN LAIN UPON FOR RELIEF WAS PRESERVED. ON JULY 16, 1976, APPELLANT'S MOTION FOR NEW TRIAL WAS OVERRULED AND A TIMELY NOTICE OF APPEAL TO THE SUPREME COURT OF MISSOURI WAS FILED.

THE SUPREME COURT OF MISSOURI AFFIRMED APPELLANT'S CONVICTIONS ON JANUARY 9, 1978 AND NOTICE OF APPEAL TO THE UNITED STATES SUPREME WAS FILED ON FEBRUARY 24, 1978.

## REASONS FOR GRANTING REVIEW

THE DECISION BELOW DIRECTLY CONFLICTS WITH THE PRINCIPLES ENUMERATED IN THIS COURT'S TAYLOR V. LOUISIANA, 419 U.S. 522, 42 L.ED.2D 690, 95 S.CT. 692 (1975), RULING.

THIS COURT IN TAYLOR, SUPRA, HELD THAT LOUISIANA'S CONSTITUTIONAL AND STATUTORY PROVISIONS EXEMPTING WOMEN FROM JURY SERVICE UNLESS THEY PREVIOUSLY FILED A WRITTEN DECLARATION OF THEIR DESIRE TO BE SUBJECT TO SUCH SERVICE WERE UNCONSTITUTIONAL AS VIOLATING THE FAIR CROSS-SECTION REQUIREMENTS OF THE SIXTH AND FOURTEENTH

AMENDMENTS.

IN THE CASE AT BAR, WILLIAM ARRINGTON WAS DEPRIVED OF HIS SIXTH AND FOURTEENTH AMENDMENT RIGHT TO AN IMPARTIAL TRIAL BY A JURY DRAWN FROM A REPRESENTATIVE CROSS-SECTION OF SOCIETY.

THE QUESTION PRESENTED HERE IS THEN WHETHER MISSOURI OFFERS AN AUTOMATIC EXEMPTION BASED SOLELY ON SEX AND IF THE CONSEQUENCES ARE THAT CRIMINAL JURY VENIRES ARE THEREFORE TOTALLY MALE THEN ARTICLE I, SECTION 22(B) OF THE MISSOURI CONSTITUTION MUST BE DECLARED UNCONSTITUTIONAL AS OFFERING AN ABSOLUTE EXEMPTION TO JURY SERVICE TO WOMEN BASED STRICTLY ON THEIR GENDER TO THE DEPRIVATION OF APPELLANT'S RIGHT UNDER THE SIXTH AND FOURTEENTH AMENDMENT TO AN IMPARTIAL JURY TRIAL.

THE ONLY DIFFERENCE BETWEEN THE LOUISIANA STATUE AND THE MISSOURI STATUE IS THAT IN LOUISIANA THE WOMAN MUST AFFIRMATIVELY OPT FOR SERVICE WHILE THE MISSOURI WOMAN MUST AFFIRMATIVELY CHOOSE NOT TO SERVE. THE PROVISION OF ARTICLE I, SECTION 22(B) OF THE MISSOURI CONSTITUTION CONTAINS THE SAME INFIRMITIES CONDEMNED IN TAYLOR.

FINALLY, APPELLANT WAS NOT GIVEN THE OPPORTUNITY TO PROVE HIS ALLEGATIONS AS THE MOTION TO QUASH THE PANEL WAS SUMMARILY OVERRULED WITHOUT A HEARING. ALTHOUGH NO HEARING WAS HELD, EVIDENCE OF THE EFFECT OF SEX EXCLUSION WAS READY AND AVAILABLE.

## CONCLUSION

FOR THESE REASONS, APPELLANT SUBMITS THAT A WRIT OF CERTORARI ISSUE TO REVIEW THE JUDGEMENT AND OPINION OF THE SUPREME COURT OF MISSOURI.

RESPECTFULLY SUBMITTED,

STATE OF MISSOURI )
) SS.:
COUNTY OF COLE )

William Arrington
WILLIAM ARRINGTON

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I MAILED A TRUE AND CORRECT COPY OF THE FOREGOING, POSTAGE PREPAID, BY PLACING THE SAME IN THE U.S. MAILS, THIS 5th DAY OF APRIL, 1978, TO:

THE HONORABLE JOHN ASHSCROFT
ATTORNEY GENERAL OF MISSOURI
BOX 899, SUPREME COURT BUILDING
JEFFERSON CITY, MISSOURI 65101

William Arrington
WILLIAM ARRINGTON

SUBSCRIBED TO AND SWORN TO BEFORE ME THIS APR 4 1978 DAY OF APRIL, 1978.

William J. Hinson
NOTARY PUBLIC
William J. Hinson

My Commission Expires June 6, 1980
MY COMMISSION EXPIRES _____